

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Andrew Ware,

Plaintiff,
v.

Bryan Stirling, Tonya James, and Kevin
Burnham,

Defendants.

Case No. 2:21-cv-03514-RMG

ORDER AND OPINION

This matter is before the Court on the Report and Recommendation (“R & R”) of the Magistrate Judge, recommending that the Court summarily dismiss Plaintiff’s claims for failure to state a claim. (Dkt. No. 13). Plaintiff did not file an objection to the R & R. For the reasons set forth below, the Court adopts the R & R as the Order of the Court.

I. Background

Plaintiff proceeds *pro se* and *in forma pauperis* to alleging violations of his civil rights pursuant to 42 U.S.C. § 1983. Specifically, Plaintiff claims that his Eighth Amendment right to adequate medical care was violated when there was a delay in Plaintiff receiving a surgery to treat a hernia. Plaintiff asks the Court to schedule his surgery and award him at least 25,000.00 in damages.

This case was assigned to a Magistrate Judge for all pretrial proceedings pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). The Magistrate Judge granted Plaintiff leave to amend his complaint to bring the case in the proper form. (Dkt. No. 5). Plaintiff did not file an amended complaint. The Magistrate Judge then reviewed the complaint pursuant to the procedural provisions 28 U.S.C. § 1915. Upon that review, the Magistrate Judge issued an R & R

recommending the Plaintiff's complaint be summarily dismissed without prejudice and without further leave to amend. (Dkt. No. 13).

II. Standard

The Magistrate Judge makes a recommendation to the Court that has no presumptive weight, and therefore the responsibility to make a final determination remains with Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where the plaintiff objects to the R & R, the Court “makes a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* In the absence of objections, the Court reviews the R & R to “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s note; *see also Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983) (“In the absence of objection . . . we do not believe that it requires an explanation.”).

III. Discussion

After careful review of the Complaint and the R & R, the Court agrees with the determination of the Magistrate Judge that this action should be summarily dismissed without prejudice. The Magistrate judge correctly found that the complaint fails to allege sufficient facts to state a claim against any of the Defendants. The Magistrate Judge aptly identified that the pleadings do not make specific allegations of personal involvement by any of the Defendants. For that reason, and others stated by the Magistrate Judge, the Court accepts the R & R as the order of the court.

IV. Conclusion

For the foregoing reasons, the Court **ADOPTS** the R&R (Dkt. No. 13) as the order of the Court and **DISMISSES** Plaintiff's claims without prejudice and without further leave to amend. **AND IT IS SO ORDERED.**

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

November 15, 2022
Charleston, South Carolina